IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3618 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

G N DESAI
Versus
STATE OF GUJARAT

Appearance:
1. Special Civil Application No. 3618 of 1999
MR IS SUPEHIA for Petitioner No. 1
MR PRADIP BHATE A.G.P. for Respondent No. 1
RULE SERVED for Respondent No. 1,2

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 22/03/2004

ORAL JUDGEMENT

In this petition, the petitioner has claimed twofold relief namely that he is covered under Resolution

dated 5th July, 1991 which introduces a scheme for payment of higher grade payscale at 9, 18 and 27 years of service and secondly, that he should be given the payscale of Rs.1640-2900, 2000-3500, 2200-4000 on completion of 9, 18 and 27 years of service in accordance with Resolution dated 5th July, 1991.

1.1. The petitioner joined the service of the respondents as Store keeper on 29th March, 1962. After putting in about 27 years of service, he voluntarily retired with effect from 31st March, 1989. According to him, in view of the length of service put in by him, he should get the benefit of scheme vide Resolution dated 5th July, 1991 and he should be granted the payscale stated above. Since, his request was not acceded to, he entered into correspondence with the higher authorities. However, he did not get the favourable response. It was the say of the respondents that in view of the Resolution dated 16th August, 1994, he would not get the benefit of the Resolution dated 5th July, 1991. It is this decision of the respondents which is now being challenged alonwith the challenge with regard to which higher grade payscale to be made available to the petitioner. So far as the payscale is concerned, the petitioner has given up that challenge in this petition as can be seen from the affidavit-in-rejoinder wherein it has been stated in alongwith 2 as under :-

> "2. I say that the deponent has repeatedly stated in the affidavit-in-reply that I am not entitled to the first higher grade scale of Rs.1640-2900 but to the first higher grade scale of Rs.1400-2600. I say that on this point some litigations are pending in Civil Suits filed by other storekeepers. Therefore, I would not press this point in this petition and would take up fresh proceedings if need be. Therefore, my prayer clause may be read accordingly."

1.2. The question therefore, which now remains to be decided is whether he would get the benefit of Resolution of the year, 1991. As stated above, the petitioner has retired on 31st March, 1989. The question with regard to applicability of the Resolution of the year, 1999 came under consideration before this Court and the learned Single Judge (Coram : R.K. Abichandani, J.) vide decision dated 11th April, 1996 rendered in the case of Sabarkantha Jilla Nivruti Prathmik Shikshak Sangh v. D.D.O. in Special Civil Application No. 6589 of 1995 has decided that persons who retired between 1st June, 1987 and 31st July, 1994, will be governed by the

Resolution dated 5th July, 1991, and the scheme contained in the said Resolution would be applicable to them. Similar view has been taken by another learned Single Judge of this Court (Coram : Rajesh Balia, J.) in the decision rendered in the case of G.S. Joshi v. Administrative Officer dated 25th August, 1999 in Special Civil Application No. 10204 of 1998. In the said decision, it is decided that Clauses 3.28 and 3.29 of the scheme contained in the Resolution of the year 1994, applied to persons who were in service after after 1st August, 1994 and not to the persons who retired prior to that.

2. Mr. Pradip Bhate learned A.G.P. appearing for the respondents does not seriously controvert this position.

3. In view of the aforesaid, it is clear that the petitioner would be governed by the scheme of 5th July, 1991, and he will be entitled to receive the benefit of grant of higher grade payscale on completion of 9, 18 and 27 years of service. This petition is, therefore, partly allowed to the extent that it relates to grant of higher grade payscale to the petitioner as aforesaid. Since, prayer relating to the grant of payscale as stated above is not pressed, it is not granted. Rule is made absolute to the aforesaid extent with no order as to costs.

In view of this, whatever the pensionary benefits that are available to the petitioner, be revised accordingly and be paid to with 12% interest thereon. The aforesaid direction to be carried out on or before 30th June, 2004.

[AKSHAY H. MEHTA, J.]

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